IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

Crl.Rev.Pet.No. 3105 of 2007(C)

CRA.869/2006 of I ADDL.SESSIONS COURT, ERNAKULAM
CC.767/2002 of JUDL.MAGISTRATE OF FIRST CLASS, PERUMBAVOOR

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REVN. PETITIONER: APPELLANT/ACCUSED

M.T.GEORGE, S/O.M.C.THOMAS,
AGED 54 YEARS, MECHAMELIL VEEDU,
METHALA KARA, ASAMANNUR VILLAGE,
KUNNATHUNADU TALUK, ASAMANNUR P.O.

BY ADV. SRI.BIJU ABRAHAM
SRI.SREEVALSAN.V

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE

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1. M.V.JOSEPH, AGED ABOUT 60 YEARS,
MUTHUKAD VEEDU, EKUNNAM KARA, ASAMANNUR VILLAGE,
KUNNATHUNADU TALUK, ASAMANNUR P.O.

2. STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR, ERNAKULAM.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 3105 of 2007

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Dated this the 8th day of October, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No. 767 of 2002 on the file of the J.F.C.M, Perumbavoor challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner contended that Ext.P1 cheque dated 30.03.2002 is a mutilated one since as originally written year 2001 has been corrected as 2002 without

the knowledge or consent of the revision petitioner. According to him, what was entrusted to PW1 was only two blank signed cheque.

5. The lower appellate court has considered the above contention and has repelled the same by relying on the deposition of the revision petitioner himself examined as PW2. He has admitted that the borrowal was in the year 2002 and at the time of borrowal, he had entrusted two signed blank cheques. Hence, he cannot say that the year 2001 was corrected as 2002 when his own admitted case is that the cheque was handed over in the year 2002. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

6. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence imposed on the revision petitioner. Accordingly, if the revision petitioner pays to the first respondent complainant by way of compensation under Sec. 357 (3) Cr.P.C. a sum of Rs.3,01,000/- (Rupees Three lakhs and thousand only) [giving credit to the sum of Rs.1,00,000/-(Rupees one lakh) already deposited before the

trial court pursuant to the interim order passed by the lower appellate court and which amount shall be permitted to be withdrawn by the 1st respondent/complainant] within **three months** from today, then he need to undergo only imprisonment till the rising of the court. If the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

sd/**-V. RAMKUMAR, JUDGE.**

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/True Copy/

P.A to Judge.